



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 20, 2011

CBCA 2201-RELO

In the Matter of KEVIN D. REYNOLDS

Kevin D. Reynolds, Arlington, VA, Claimant.

Paul W. Henne, Assistant Director – Business Management and Operations and Chief Financial Officer, Fish and Wildlife Service, Washington, DC, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

On May 10, 2011, the Board issued its decision in this case. We held that provisions of a Fish and Wildlife Service (FWS) manual were invalid because they were inconsistent with the Federal Travel Regulation (FTR). Once the agency has agreed to reimburse a transferred employee for temporary quarters subsistence expenses (TQSE) he had incurred, it cannot administer TQSE benefits in a way which is at variance from the one established by the FTR.

On June 10, 2011, FWS asked us to reconsider our decision, alleging that the agency's policy is based on its understanding of the FTR and past Board decisions. The agency asserts that "[d]ue to decreasing relocation budgets, management may . . . base . . . decision[s] on higher standards that are driven primarily by expected budgetary outlays for having to pay a full discretionary expense."

The request for reconsideration is untimely, for it was made more than thirty days after the date the decision was issued. Board Rule 407 (48 CFR 6104.407 (2010)). The request is therefore dismissed. We note briefly that whatever understandings the agency may have had with regard to the FTR and past Board decisions were incorrect. We analyzed the relevant portions of the FTR thoroughly in our decision in this case. The one decision cited

by the agency, *Richard P. Crane*, GSBCA 15782-RELO, 02-2 BCA ¶ 31,996, addresses the interrelationship between house hunting trips and TQSE, a subject not at issue here. Further, an agency's budgetary constraints are not valid cause for violating provisions of statute and regulation, including those which create or permit travel or relocation benefits for federal employees. *Robert W. Carlson*, CBCA 2165-TRAV (May 17, 2011); *Judith A. Sukol*, CBCA 2092-RELO, 10-2 BCA ¶ 34,574; *Paul B. D'Agostino*, GSBCA 16841-RELO, 06-2 BCA ¶ 33,309. If an agency believes that following those provisions interferes with acting in accordance with "higher standards," the proper course is to seek changes in the law, not to disregard it.

STEPHEN M. DANIELS
Board Judge